

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ZERLEAN MARTIN,

Plaintiff, on behalf of herself and all similarly situated persons,

-vs-

Case: 2:08-cv-11342
Judge: Edmunds, Nancy G
MJ: Whalen, R. Steven
Filed: 03-28-2008 At 03:37 PM
CMP MARTIN V WELTMAN, WEINBERG & REIS CO., L.P.A. (EW)

WELTMAN, WEINBERG & REIS CO., L.P.A.,

Defendant.

CLASS ACTION COMPLAINT & JURY DEMAND ALLEGING VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT AND SEEKING STATUTORY AND ACTUAL DAMAGES, ATTORNEY FEES AND COSTS

Introduction

1. This is a class action suit brought pursuant to Federal Civil Rule 23 for statutory damages, attorney fees and costs under the Fair Debt Collection Practices Act ("FDCPA"). The action challenges the debt-collection practice of mailing to consumers mass-produced dun letters purporting to come from an attorney which are neither signed, reviewed nor evaluated by an attorney prior to mailing.

Jurisdiction

2. This court has federal question jurisdiction under the Fair Debt Collection Practices Act, 15 U.S.C. §1692 and 28 U.S.C. §§1331, 1337.

Parties

3. The Named Plaintiff to this lawsuit resides in Harper Woods, Michigan in Wayne County.

4. Weltman, Weinberg & Reis Co., L.P.A., ("Weltman, Weinberg & Reis Co., L.P.A.") is a corporation doing business in Michigan.

Venue

5. The transactions and occurrences which give rise to this action occurred in Wayne County.
6. Venue is proper in the Eastern District of Michigan.

General Allegations

7. Upon information and belief, the Defendant has been hired by LVNV Funding LLC to collect an account purportedly owed by the Named Plaintiff.
8. On or about November 1, 2007, the Defendant mailed a letter to the Plaintiff referring to a debt allegedly owed to LVNV Funding LLC. (See Attached Exhibit A, "the letter.").
9. The letter is unsigned and purportedly came from the "Law Offices of Weltman, Weinberg & Reis Co., L.P.A.
10. On information and belief, Defendant has sent countless identical unsigned letters to consumers throughout the nation.
11. On information and belief, no attorney reviewed nor evaluated the letter.
12. On information and belief, no attorney reviewed or evaluated the claims asserted in or implied in the letter.

COUNT I – Fair Debt Collection Practices Act (Weltman, Weinberg & Reis Co., L.P.A.)

13. Ms. Martin incorporates the preceding allegations by reference.
14. At all relevant times Weltman, Weinberg & Reis Co., L.P.A. – in the ordinary course of its business – regularly engaged in the practice of collecting debts on behalf of other individuals or entities.

15. Weltman, Weinberg & Reis Co., L.P.A. is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
16. Weltman, Weinberg & Reis Co., L.P.A. 's foregoing acts in attempting to collect this alleged debt against Ms. Martin constitute violations of the FDCPA.
17. Ms. Martin has suffered damages as a result of these violations of the FDCPA.

CLASS CLAIMS

18. Ms. Martin incorporates the preceding allegations by reference.
19. The conduct mentioned herein was unfair, deceptive and/or unconscionable and violated the FDCPA in the following manner:
 - a. it constituted the false representation or implication that a communication came from an attorney or that a debt had been reviewed or evaluated by an attorney when, in fact, it had not, in violation of 15 U.S.C. § 1692e(3);
 - b. it constituted conduct which had the natural consequence of harassing, oppressing, or abusing consumers in connection with the collection of a debt in violation of 15 U.S.C. § 1692d;
 - c. it constituted the use of a false representation or deceptive means to collect a debt in violation of 15 U.S.C. § 1692e(10);
 - d. it constituted an unfair and/or unconscionable means to collect or attempt to collect a debt in violation of 15 U.S.C. § 1692f.
20. As a direct and proximate result of Defendant's conduct, Plaintiff and the class were damaged and are entitled to statutory damages.

CLASS ALLEGATIONS

21. This action is brought as a class action on behalf of all persons to whom Weltman, Weinberg & Reis Co., L.P.A. sent a letter on its own letterhead attempting to collect a debt which was not signed by an attorney.
22. Plaintiff brings this action on behalf of herself and other members of a class of consumers numbering, on information and belief, in excess of 1,000.
23. The class of persons to be represented are so numerous that joinder of all members is impractical.
24. There are questions of law and fact common to the class that relate to and affect the rights of each member of the class and the relief sought is common to the entire class.
25. The Named Plaintiffs' claims are typical of the claims of all the potential class members; all are based on the same legal and remedial theories.
26. There is no known conflict between the Named Plaintiff and the other members of the class with respect to this action, or with respect to the claims for relief set forth herein.
27. The Named Plaintiffs will fairly and adequately protect the interest of the class.
28. The Named Plaintiffs have retained counsel who are experienced in handling class actions and/or consumer litigation under the Federal Consumer Credit Protection Act.
29. Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is appropriate in that:
 - a. The questions of law or fact common to the members of the classes predominate over any questions affecting an individual member.

- b. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
- 30. There is no impediment to certification of the classes to be represented.
- 31. This action is properly maintained as a class action in that the prosecution of separate actions by individual class members creates risk of individual adjudications which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.
- 32. This action is properly maintained as a class action inasmuch as Defendants have acted or refused to act on grounds applicable to the class, and have, by reason of such conduct, made final injunctive relief or corresponding other relief appropriate with respect to the entire class, as sought in this action.
- 33. The identity of each individual member of the class can be ascertained from Defendants' books and records.
- 34. Because many members of the class may not be aware of their rights, or are not in a financial position to assert such rights readily, and because relegation of their claims to individual actions result in an unreasonable multiplicity of suits and a corresponding burden on this and other courts, a class action is far superior to all other methods for a fair and efficient adjudication of this controversy.

JURY DEMAND

- 35. The Plaintiff requests a trial by jury.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. a ruling from this Court that this claim is appropriate for class action treatment, and the certification of a class pursuant to Rule 23(b)(3), Fed. R. Civ. P.;
- b. a judgment against Defendants for all statutory damages to which Plaintiff and all members of the class are entitled; and
- c. reimbursement of or payment for reasonable costs and attorney fees incurred by counsel for Plaintiff in connection with the successful prosecution of this claim;

Respectfully Submitted,

ADAM G. TAUB & ASSOCIATES
CONSUMER LAW GROUP, PLC

By: s/ ADAM G. TAUB
Adam G. Taub (P48703)
Attorney for Named Plaintiffs
18930 West 10 Mile Rd. Suite 2500
Southfield, MI 48075
(248) 746-3790
adamgtaub@clgplc.net

s/ ADAM S. ALEXANDER
THE ALEXANDER LAW FIRM
Attorney for Named Plaintiffs
18930 West 10 Mile Rd. Suite 2500
Southfield, MI 48075
(248) 246-6353
adalesq@gmail.com
(P53584)

Dated: March 28, 2008

EXHIBIT A

LAW OFFICES OF
WELTMAN, WEINBERG & REIS CO., L.P.A.
323 W. Lakeside Ave. Ste. 200
Cleveland, OH 44113-1099
(216) 739-5651 (800) 286-9403
Mon-Thurs 8am-9pm, Fri 8am-5pm, & Sat 8am-12pm EST

November 1, 2007 6071390/H3T/160/6152363/0857

ZERLEAN EVERETT

HARPER WOODS, MI 48225

LVNV FUNDING LLC
Account No. 213731062
Balance Due: \$11,172.10

Dear Sir/Madam:

Please be advised that our client has authorized us to accept 60% of the total balance due as settlement of this claim. It is important that you contact our office to discuss the amount necessary to settle this account.

This law firm is a debt collector attempting to collect this debt for our client and any information obtained will be used for that purpose.

Thank you for your attention and cooperation in this matter. Should you have any questions, please feel free to contact us.

Sincerely,

Weltman, Weinberg & Reis Co., L.P.A.

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

ORIGINAL

I. (a) PLAINTIFFS

ZELEAN MARTIN, on behalf of herself and all similarly situated persons

DEFENDANTS

WELTMAN, WEINBERG & REIS CO., L.P.A.

(b) County of Residence of First Listed Plaintiff WAYNE

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Adam G Taub & Associates Consumer Law Group, PLC
18930 W Ten Mile Road - Ste 2500, Southfield, MI 48075-2629
(248) 746-3790

II. BASIS OF JURISDICTION (Select One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CIT

(f) IS CO., L.P.A. (EW)

(u)
DEF
 4

Citizen of This State

of Business ...

Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5

Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	REAL PROPERTY <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	CIVIL RIGHTS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PRISONER PETITIONS <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIFWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Select One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 and 28 USC 1331, 1337

Brief description of cause:

The above named defendant has violated the Fair Debt Collections Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 28, 2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

ORIGINAL

Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
